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January 8, 2020

House of Representatives
United States Congress
Washington, DC 20515

RE: H.R. 535, The PFAS Action Act of 2019

Dear Representative:

As the House considers H.R. 535, The PFAS Action Act of 2019, the Water Environment Federation (WEF)¹ writes to express our concerns with the legislation. WEF is the educational and technical association for water professionals working to maintain and improve water quality and public health in communities around the world. While WEF strongly supports the need to develop forceful regulatory management of per- and polyfluoroalkyl substances (PFAS), H.R. 535 will potentially bypass the scientific process for developing regulatory policies, as well as expose entities that are PFAS receivers, such as wastewater treatment facilities and biosolids management programs, to undue liabilities.

The challenges PFAS pose for our 35,000 members are significant, but they are committed to working with the public, regulators, and other stakeholders to find solutions to managing it in the wastewater treatment process. WEF maintains that PFAS producers and users should be held responsible for the potentially significant financial costs of removing PFAS from our communities. This cost cannot fall on water utilities and the communities they serve, who are simply receivers of PFAS.

Of particular concern to WEF is that H.R. 535 has the potential to expose wastewater treatment facilities and biosolids management programs to liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Case law and legal journal interpretations of CERCLA do not clearly support an existing or probable exemption or legal shield for biosolids management programs as a Potential Responsible Party, although wastewater treatment facilities are clearly PFAS receivers and not producers or users. WEF strongly feels that a similar liability exemption should be given for wastewater and biosolids programs that H.R. 535 gives to airports that use firefighting foams with PFAS.

¹ The Water Environment Federation (WEF) is a not-for-profit technical and educational organization of 35,000 individual members and 75 affiliated Member Associations representing water quality professionals around the world. Since 1928 WEF and its members have protected public health and the environment. As a global water sector leader, WEF's mission is to connect water professionals; enrich the expertise of water professionals; increase the awareness of the impact and value of water; and provide a platform for water sector innovation.

WEF also supports policymaking based upon the best science and data, but H.R. 535 will potentially bypass the necessary research and scientific processes needed to make comprehensive policy. The Clean Water Act (CWA) and CERCLA both have mechanisms to ensure that PFAS management is based upon strong science and enforceable under the law. Therefore, in order for the U.S. Environmental Protection Agency to appropriately apply the right regulatory mechanisms, it needs to have the science and data available and in a timely manner given the urgency to address this challenge.

Thank you for the opportunity to comment on H.R. 535.

Respectfully,

A handwritten signature in black ink, appearing to read "Walter Marlowe", with a long horizontal flourish extending to the right.

Walter Marlowe, P.E., CAE
Executive Director
Water Environment Federation
703.684.2430